

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

IN RE: DIGITEK PRODUCTS LIABILITY LITIGATION

MDL NO. 1968

THIS DOCUMENT RELATES TO ALL CASES

**APPLICATION OF LESTER L. LEVY OF WOLF POPPER LLP
TO BE APPOINTED TO PLAINTIFFS' STEERING COMMITTEE**

Pursuant to Pretrial Order No. 2, Lester L. Levy of Wolf Popper LLP, counsel for named plaintiffs Michael Pasken, Marie Keever, and Dale Campbell, respectfully submits this Application to be appointed to the Plaintiffs' Steering Committee.¹

I am a member of the Bar of the State of New York and am admitted to practice before numerous federal courts throughout the United States. I have been prosecuting consumer class actions, including cases involving the manufacture of drugs, for almost 40 years, and have lectured on complex litigation at the University of Illinois and the University of Miami Law Schools. My efforts and those of my firm have successfully resulted in the recovery of billions of dollars for injured consumers and investors. Since the Court has directed that submissions be limited to 3 pages, I respectfully refer the Court to my firm's website, www.wolfpopper.com, for the detailed biographies of my firm and our attorneys, and judicial commentary on the skills of my firm.

**WILLINGNESS AND AVAILABILITY TO COMMIT
TO A TIME CONSUMING PROJECT**

As Chairman and Managing Partner of Wolf Popper, a firm of approximately 20 attorneys

¹ My firm also has been contacted by numerous additional potential Digitek plaintiffs. Their information is being analyzed to determine whether actions should be filed.

specializing in consumer and other class action litigation, I am willing and available to devote the appropriate and necessary resources of my firm to the prosecution of this action.

ABILITY TO WORK COOPERATIVELY WITH OTHERS

I and my firm are committed to working cooperatively with all counsel and the Court. In both my professional and non-professional efforts I have demonstrated the ability and the commitment to working cooperatively with others to secure the most beneficial and just result on behalf of my clients or goals. I personally have served as Lead or Co-Lead Counsel in dozens, if not hundreds, of class actions, successfully directing the prosecution of cases by teams of attorneys dispersed throughout the U.S. My partner attended the organizational meeting of Plaintiffs' counsel held in Chicago (by telephone) in this action, and has had communications with Harry Bell, the Court-appointed Co-Liaison Counsel for Plaintiffs concerning the Plaintiffs' Steering Committee. (Mr. Bell has understandably stressed the interest of the Court in ensuring that the parties, on both sides, work cooperatively in the conduct of the litigation.)

I and my firm's ability to work well with others² is exemplified by our work in In re Motorola Sec. Litig., 03 C 287 (N.D.Ill.), a class action wherein my firm was co-lead counsel and represented the Lead Plaintiff, the State of New Jersey, in which I supervised the work of numerous other firms and achieved a \$190 million recovery. At the September 7, 2007 hearing approving the settlement, the Court complimented the attorneys saying, "You did a great very professional job here. This was a hard fought, but extremely professionally fought battle and I appreciate it. Thank you."

² My ability to work cooperatively with others is also amply demonstrated by my non-profit volunteer work, including being awarded the Lifetime Trustee Award from the National Multiple Sclerosis Society for "outstanding service to the MS community."

PROFESSIONAL EXPERIENCE IN THIS TYPE OF LITIGATION³

I am in charge of my firm's Consumer Law Department, which includes prosecution of mass torts and numerous drug antitrust cases. For my work in these areas I have been recognized by "Super Lawyers"®, including designating me as a New York "Super Lawyer" in the Mass Torts category in 2008, and the Consumer and Class Action category in 2007. I (and my partners) also hold the highest peer-review rating issued by Martindale-Hubbell, "AV." As an example, although not a drug case, most recently, in the MDL consumer class action entitled In re TJX Companies Retail Security Breach Litig., Master Docket No. 07-10162, MDL No. 1838, in which I served as Co-Lead Counsel, the Court, on July 15, 2008, stated that plaintiffs' counsel achieved an "excellent settlement" for the consumers, that they "have been very creative" and performed "a wonderful job." My partner on this case, Patricia I. Avery (also a designated "Super Lawyer" and rated as "AV" by Martindale-Hubbell), has also litigated numerous antitrust and securities cases involving pharmaceuticals and pharmaceutical products. She has worked over the past year with one of the leading cardiovascular/clinical trial physicians in the country as an expert on cardiovascular drugs in connection with an action against pharmaceutical companies, In re Tricor Indirect Purchaser Antitrust Litigation, C.A. No. 05-360 (SLR) (consolidated with C.A. No. 02-1512).

Wherefore, I respectfully request that the Court grant this Application.

Dated: October 17, 2008

Respectfully submitted,

/s/ Lester L. Levy
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³ Unlike many "mass tort" cases which involve pharmaceutical products, since this case involves "double-dosing" of the product causing long-documented and well-known adverse effects on patients, this case is more akin to a defective manufacture or consumer case as opposed to a drug with undisclosed adverse effects, defects or interactions, such as Vioxx.

CERTIFICATE OF SERVICE

I hereby certify that on October 17, 2008, I caused the foregoing **APPLICATION OF LESTER L. LEVY OF WOLF POPPER LLP TO BE APPOINTED TO PLAINTIFFS' STEERING COMMITTEE** to be served on counsel by uploading it onto the CM/ECF system for the United States District Court, for the Southern District of West Virginia, which will send notice of electronic filing to the parties of record with e-mail addresses on file with the Court.

/s/ Lester L. Levy
Lester L. Levy